previously indicated, would do violence to the very purpose and intent of the provisions of the chapter relating to highway safety. The legislation was designed to meet conditions where otherwise it would be impossible to move certain implements, and was not intended to provide a mere convenience.

You are therefore advised that it is the opinion of this office that the exceptions set forth in Section 321.453, Code of Iowa, 1950, do not include a combination of farm implements which may be moved severally, and that the facts set forth in your request constitute such a combination as is not included within the exceptions of said Section 321.453.

December 13, 1951

TAXATION: Homestead credit—what constitutes good faith occupation. Although an applicant for homestead tax credit, for valid reasons absents himself from the premises, if he has a bona fide intention and right to return and occupy his home on the premises for six months each year at any time when his occasion for temporary absence is ended, then in that event, he is entitled to the credit. Good faith of such intention may be shown by retention of living quarters exclusively under his control, having dining and sleeping facilities, as well as equipment and furnishings. Clothing and personal effects kept on the premises are also pertinent facts to consider.

Mr. Dayton Countryman, County Attorney, Nevada, Iowa: We have yours of recent date in which you have submitted the following:

"I have been requested by the County Assessor to write for an opinion with reference to Section 425.11, Code of Iowa, 1950, and in particular the part of Subsection 1,a which I quote:

'. . . dwelling house in which the owner is living at the time of filing the application and said application must contain affidavit of his intention to occupy the said dwelling house in good faith as a home for six months or more . . .'

There is an Attorney General's opinion, 1938, at page 598, which covers this particular section of the Code under the 1939 Code and up until 1941 when the Forty-ninth General Assembly deleted part of the law with reference to actually living six months or more in the year in said dwelling house.

Therefore our question is:

1. Does the Attorney General's opinion of 1938 at page 598 still apply to Section 425.11, 1950 Code of Iowa, in view of the change that the legislature made in 1941, Forty-ninth General Assembly wherein that part pertaining to the owner actually living six months or more of the year was deleted?

2. In case the Attorney General's opinion above referred to no longer applies, kindly advise as to whether or not the following person is entitled to homestead exemption.

A, who owns a small farm outside of town and usually rents the house with the exception of one room which she reserves for herself and declares this to be her home, and which room this owner occupies only infrequently because she owns and runs a nursing home in town where she of necessity must spend a good share of her time, over six months of actual time each year. Yet, A wishes to and does in fact claim her homestead on the farm where she maintains a room which she uses infrequently throughout the year. Can A get credit for homestead exemption on 40 acres of her farm?"

In answering your inquiry it is necessary we examine in detail the Homestead Tax Credit Act. This Act was passed by the 47th General Assembly and became effective March 25, 1937, and the legislative purpose, as recited in the Act, was to encourage home ownership and occupancy in order to promote the social and economic life of the people of Iowa. The Preamble states in part:

"Whereas, a healthier and more prosperous condition exists in the state when the owner occupies his own farm or dwelling, and it is for the best interests of the people as a whole when such condition exists; and

Whereas, it is the intention of the legislature, and the purpose of this act to encourage and foster home ownership and occupancy, * * *"

The statute contains, among other things, the definitions which are, of course, controlling in interpreting the Act. This is not a credit to the owner but to the homestead, although this results in benefit to the owner, and cash refunds were allowed to taxpayers who had paid such taxes prior to the allowance of the credit. That the credit is to the property as distinguished from the owner is evident from the provisions of the Act as the credit is given against the tax on the homestead, and the taxpayer makes claim therefor as owner of such property. The homestead exemption law was not adopted on the premise that a homestead credit is a gift or bonus with no consideration requirements in return. As consideration for exemption, it might be said that the homestead earns its credit each year of its existence. See Ahrweiler v. Board, 226 Iowa 230 at page 236.

This is an act providing for credits against certain property taxes and, as its name indicates, is a tax exemption act; therefore, in its construction and interpretation one should follow the rules relating to tax exemptions. It is a well-established principle that tax exemption statutes should be strictly construed and that those claiming exemptions must show themselves entitled thereto within the purview of the Act.

Theta Xi Bldg. Assn. v. Board of Review, 217 Iowa 1181;
Samuelson v. Horn, 221 Iowa 208;
Grand Lodge of Iowa v. Madigan, 207 Iowa 224;
Readlyn Hospital v. Hoth, 223 Iowa 341;
Ahrweiler v. Board, 226 Iowa 230.

It is to be noted that in attempting to arrive at the correct interpretation of any particular provision of the Act and the intention of the legislative body, as expressed therein, it is necessary to consider the entire act and, so far as possible, construe its various provisions in the light of their relation to the whole.

"Owner" is defined in such clear terms that we do not believe the language admits of construction and the extent of the homestead is

clearly defined in the Act. The credit, unless applied for, is waived under the provisions of Section 425.6. The section which seems to present the most difficulty is 425.11 which provides:

"The homestead must embrace the dwelling house in which the owner is living at the time of filing the application and said application must contain an affidavit of his intention to occupy said dwelling house in good faith as a home for six (6) months or more in the year for which the credit is claimed."

This provision was inserted in the law in 1941 and, previous to that time, the law required that the owner actually live in the premises six (6) months or more in the year. Under the law as it previously existed this office has issued several opinions which, of course, are not pertinent or controlling in an interpretation of the statute in its present form.

As we view the above quoted paragraph, the provisions as to good faith are clear and require the applicant, at the time of making the application, to do so in good faith and such good faith must be actual and not a figment of the mind or an assumed attitude which is contrary to the undisclosed intentions of the applicant at time of filing of the application. The nub of the controversy is what was intended by the legislature when they employed the language, "the dwelling house in which the owner is living at the time of filing the application", and "an affidavit of his intention to occupy said dwelling house in good faith as a home". The legislature did not use the words "residence" or "domicile" but expressed themselves and their intent by employing the language "is living", and "intention to occupy". One could live in a dwelling or occupy it by being physically present therein or under certain circumstances a person might be constructively living in or occupying a place. We do not believe that the legislature intended that the statute should be so strictly construed, even though a tax exemption statute, as to deprive an owner of credit where he was in good faith actually or constructively living in or occupying the premises as a home. One who occupies premises and has established therein his homestead, but who, due to illness or some other valid reason, leaves his premises temporarily, cannot be denied a credit because he is not physically present there at the time of making application or during the statutory period. If the person establishes his homestead right in the premises, the right attaches to the homestead as defined by the terms of the statute, namely, "not to exceed one-half acre in town or a value of $2,500 or forty (40) acres where the homestead is located outside a city or town." We do not mean to say that one can constructively occupy premises and obtain the credit under every circumstance, and each and every case must be determined on its facts, which facts, of course, include the good faith of the applicant. That the legislature intended that the facts in each case should be controlling is evidenced by Section 425.2 which requires the applicant to qualify for credit; Section 425.3 which provides that all applications shall be examined and verified by the board of supervisors, and section 425.7 which provides in paragraph three that if a claim is allowed by the board of supervisors that the State Tax Commission, upon investigation, may set aside such allowance.

The foregoing all indicate that each application must be examined so as to determine whether or not, under the facts, the applicant brings himself within the provisions of Chapter 425 and is entitled to the credit. If the applicant leases the entire premises, such fact should be construed as an abandonment of the homestead and the right to claim the credit. If a person, who is qualified and has made application, absents himself from the premises in good faith and for valid reasons and with a bona fide intention and right to return and occupy his home on the premises at any time when his temporary absence has ended, then in that event he is within the terms of the statute and entitled to the credit. Facts tending to show good faith occupation as a home, though physically absent, may be: Retention of living quarters exclusively under his control, having dining and sleeping facilities, as well as equipment and furnishings. Whether he keeps his clothing and personal effects, except those that might be temporarily used elsewhere, at these quarters, is also pertinent.

In the submitted case you have not stated facts which we deem sufficient on which to determine whether or not the party is entitled to the homestead credit, so we have set out a rule or guide by which you may determine this case yourself.

December 20, 1951

SCHOOLS AND SCHOOL DISTRICTS: **Noncontiguous isolated subdistricts—consolidation with another district.** Where two noncontiguous subdistricts of a township, each containing fewer than four government sections, are isolated as a result of the formation of a consolidated district, each becomes thereby a rural independent corporation and can be consolidated and attach itself with an adjacent area without including the other.

Miss Jessie M. Parker, Superintendent of Public Instruction; Attention: R. A. Griffin, Legal Advisor: We acknowledge receipt of yours of the 5th in which you have submitted the following:

"We are herewith requesting your official opinion concerning the following situation:

Delaware Township School District in Polk County comprises two subdistricts, No. 3 and No. 5. Each of these subdistricts contains less than four government sections of land. These two subdistricts are not, however, contiguous. A map showing these subdistricts is attached hereto.

The following question has arisen on which we would like your considered opinion.

Is there a legal procedure whereby one of these subdistricts can consolidate with or attach itself to another area without including the other subdistrict?"